

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 CHRISTOPHER WRIGHT,
12 CDCR #AK-0811,

13 Plaintiff,

14
15 vs.
16

17 STATE OF CALIFORNIA
18 DEPARTMENT OF CORRECTIONS,
19 R.J. DONOVAN,

20 Defendants.
21
22

Civil No. 12-CV-1962 MMA(JMA)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
IMPOSING NO INITIAL PARTIAL
FILING FEE, GARNISHING \$350.00
BALANCE FROM PRISONER'S
TRUST ACCOUNT [Doc. No. 8]; and**

**(2) DISMISSING COMPLAINT
FOR FAILING TO STATE A
CLAIM PURSUANT TO 28 U.S.C.
§§ 1915(e)(2) AND 1915A(b)**

23 On April 2, 2012, Christopher Wright ("Plaintiff"), a state prisoner currently incarcerated
24 at High Desert State Prison located in Susanville, California, and proceeding *pro se*, initially
25 submitted a civil action pursuant to 42 U.S.C. § 1983 in the Northern District of California.
26 Additionally, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28
27 U.S.C. § 1915(a) [Doc. No. 8]. United States District Judge Richard Seeborg determined that
28 venue was proper in the Southern District of California and therefore, transferred the matter on

1 August 1, 2012. [Doc. No. 9.]

2 **I. MOTION TO PROCEED IFP [Doc. No. 8]**

3 All parties instituting any civil action, suit or proceeding in a district court of the United
4 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
5 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee
6 only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*
7 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to
8 proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their
9 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
10 844, 847 (9th Cir. 2002).

11 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a
12 prisoner seeking leave to proceed IFP must submit a "certified copy of the trust fund account
13 statement (or institutional equivalent) for the prisoner for the six-month period immediately
14 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113,
15 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial
16 payment of 20% of (a) the average monthly deposits in the account for the past six months, or
17 (b) the average monthly balance in the account for the past six months, whichever is greater,
18 unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The
19 institution having custody of the prisoner must collect subsequent payments, assessed at 20%
20 of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and
21 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
22 § 1915(b)(2).

23 The Court finds that Plaintiff has no available funds from which to pay filing fees at this
24 time. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited
25 from bringing a civil action or appealing a civil action or criminal judgment for the reason that
26 the prisoner has no assets and no means by which to pay the initial partial filing fee."); *Taylor*,
27 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing
28 dismissal of a prisoner's IFP case based solely on a "failure to pay . . . due to the lack of funds

1 available to him when payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff’s Motion
 2 to Proceed IFP [Doc. No. 8] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).
 3 However, the entire \$350 balance of the filing fees mandated shall be collected and forwarded
 4 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
 5 § 1915(b)(1).

6 **II. INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(b)(ii) and 1915A(b)(1)**

7 Notwithstanding IFP status or the payment of any partial filing fees, the Court must
 8 subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory screening
 9 and order the sua sponte dismissal of any case it finds “frivolous, malicious, failing to state a
 10 claim upon which relief may be granted, or seeking monetary relief from a defendant immune
 11 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir.
 12 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
 13 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not
 14 only permits but requires” the court to sua sponte dismiss an *in forma pauperis* complaint that
 15 fails to state a claim).

16 Before its amendment by the PLRA, former 28 U.S.C. § 1915(d) permitted sua sponte
 17 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1130. However, as
 18 amended, 28 U.S.C. § 1915(e)(2) mandates that the court reviewing an action filed pursuant to
 19 the IFP provisions of section 1915 make and rule on its own motion to dismiss before directing
 20 the U.S. Marshal to effect service pursuant to FED.R.CIV.P. 4(c)(3). *See Calhoun*, 254 F.3d at
 21 845; *Lopez*, 203 F.3d at 1127; *see also McGore v. Wrigglesworth*, 114 F.3d 601, 604-05 (6th Cir.
 22 1997) (stating that sua sponte screening pursuant to section 1915 should occur “before service
 23 of process is made on the opposing parties”).

24 “[W]hen determining whether a complaint states a claim, a court must accept as true all
 25 allegations of material fact and must construe those facts in the light most favorable to the
 26 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren*, 152 F.3d at 1194
 27 (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”);
 28 *Andrews*, 398 F.3d at 1121. In addition, the Court has a duty to liberally construe a pro se’s

pleadings, *see Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988), which is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). In giving liberal interpretation to a pro se civil rights complaint, however, the court may not “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person acting under color of state law committed the conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983; *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

In his Complaint, Plaintiff alleges that while he was housed at the Richard J. Donovan Correctional Facility in 2011, his disability was not accommodated as required by the Americans with Disabilities Act (“ADA”). (*See* Compl. at 3.) The Americans with Disabilities Act, 42 U.S.C. § 12132, applies in the prison context. *See* 42 U.S.C. § 12131(1)(B); *U.S. v. Georgia*, 546 U.S. 151, 154 (2006). In order to state a claim under Title II of the ADA, however, a plaintiff must allege:

(1) he ‘is an individual with a disability;’ (2) he ‘is otherwise qualified to participate in or receive the benefit of some public entity’s services, programs, or activities;’ (3) he ‘was either excluded from participation in or denied the benefits of the public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity;’ and (4) ‘such exclusion, denial of benefits, or discrimination was by reason of [his] disability.’

O’Guinn v. Lovelock Corr. Ctr., 502 F.3d 1056, 1060 (9th Cir. 2007) (citations and quotations omitted).

Assuming Plaintiff was able to allege a disability that is covered by the ADA, which he currently fails to allege the specific disability in his Complaint, Plaintiff must also be able to allege facts sufficient to show that he was discriminated against *because* of his physical disability. There are no allegations that Plaintiff was discriminated against because of his alleged disability. *See Simmons v. Navajo Cnty., Ariz.* 609 F.3d 1011, 1022 (9th Cir. 2010). There are

1 simply no factual allegations to support an ADA claim in Plaintiff's Complaint.

2 More generally, Plaintiff also appears to allege that the conditions of his confinement,
3 while housed at the Richard J. Donovan Correctional Facility, violated his Eighth Amendment
4 rights. The Eighth Amendment "does not mandate comfortable prisons," and conditions
5 imposed may be "restrictive and even harsh." *Rhodes v. Chapman*, 452 U.S. 347, 349 (1982).
6 Eighth Amendment humane conditions of confinement claims require the prisoner to satisfy two
7 requirements: one objective and one subjective. *Farmer*, 511 U.S. at 834; *Allen v. Sakai*, 48
8 F.3d 1082, 1087 (9th Cir. 1994). Under the objective requirement, the plaintiff must allege facts
9 sufficient to show that "a prison official's acts or omissions must result in the denial of the
10 'minimal civilized measure of life's necessities.'" *Farmer*, 511 U.S. at 834 (quoting *Rhodes*,
11 452 U.S. at 347). This objective component is satisfied so long as the institution "furnishes
12 sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal
13 safety." *Hoptowit*, 682 F.2d at 1246; *Farmer*, 511 U.S. at 534; *Wright v. Rushen*, 642 F.2d 1129,
14 1132-33 (9th Cir. 1981). The subjective requirement, relating to the defendant's state of mind,
15 requires the plaintiff to allege facts sufficient to show "deliberate indifference." *Allen*, 48 F.3d
16 at 1087. "Deliberate indifference" in this context also exists only if the prison official "knows
17 of and disregards an excessive risk to inmate health and safety; the official must be both aware
18 of facts from which the inference could be drawn that a substantial risk of serious harm exists,
19 and he must also draw the inference." *Farmer*, 511 U.S. at 837.

20 First, Plaintiff's Complaint includes no facts which show how or to what extent he
21 personally has been deprived of any of "life's necessities." *Rhodes*, 352 U.S. at 357. Second,
22 while the Eighth Amendment does protect an inmate from an official's "deliberate indifference
23 to [a] serious illness or injury," *Estelle v. Gamble*, 429 U.S. 97, 105 (1976), and extends to
24 "physical, dental and mental health," *Hoptowit*, 682 F.2d at 1253; *Hunt v. Dental Dep't*, 865 F.2d
25 198, 200 (9th Cir. 1989); *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996), *amended by* 135
26 F.3d 1318 (9th Cir. 1998), Plaintiff has failed to allege facts to show that he personally had
27 objectively "serious" medical needs, *see McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.
28 1992), *overruled on other grounds*, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (1997) (en banc);

1 *Lopez*, 203 F.3d at 1131-32, or how any individual in this suit acted with “deliberate
2 indifference” to those needs. *Estelle*, 429 U.S. at 106.

3 The only named Defendant in Plaintiff’s Complaint is the “State of California Department
4 of Corrections, R.J. Donovan.” (Compl. at 1.) To the extent Plaintiff seeks money damages
5 against the California Department of Corrections and Rehabilitation (“CDCR”) for alleged
6 constitutional violations, the Court finds the Eighth Amendment claims against this Defendant
7 must be dismissed for failing to state a claim and for seeking damages against defendants who
8 are immune pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) & (iii). The State of California, and the
9 CDCR, an agency of the State of California, are not “persons” subject to suit under § 1983 and
10 are instead, entitled to absolute immunity from monetary damages actions under the Eleventh
11 Amendment. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 53-54 (1996); *Pennhurst State*
12 *School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *see also Hale v. Ariz.*, 993 F.2d 1387,
13 1398-99 (9th Cir. 1993) (holding that a state department of corrections is not a “person” within
14 the meaning of § 1983).

15 For these reasons, Plaintiff’s Eighth Amendment claims are dismissed for failing to state
16 a claim upon which § 1983 relief can be granted and for seeking monetary damages against an
17 immune defendant pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Lopez*, 203 F.3d at
18 1126-27; *Resnick*, 213 F.3d at 446.

19 **III. CONCLUSION AND ORDER**

20 Good cause appearing, **IT IS HEREBY ORDERED** that:

21 1. Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 8]
22 is **GRANTED**.

23 2. The Secretary of California Department of Corrections and Rehabilitation, or his
24 designee, shall collect from Plaintiff’s prison trust account the \$350 balance of the filing fee
25 owed in this case by collecting monthly payments from the account in an amount equal to twenty
26 percent (20%) of the preceding month’s income and forward payments to the Clerk of the Court
27 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).
28 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**

1 ASSIGNED TO THIS ACTION.

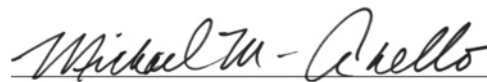
2 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,
3 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
4 Sacramento, California 95814.

5 **IT IS FURTHER ORDERED** that:

6 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
7 §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave
8 from the date this Order is "Filed" in which to file a First Amended Complaint which cures all
9 the deficiencies of pleading noted above. Plaintiff's Amended Complaint must be complete in
10 itself without reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants
11 not named and all claims not re-alleged in the Amended Complaint will be deemed to have been
12 waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended
13 Complaint fails to state a claim upon which relief may be granted, it may be dismissed without
14 further leave to amend and may hereafter be counted as a "strike" under 28 U.S.C. § 1915(g).
15 *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

16 5. The Clerk of Court is directed to mail a form section 1983 complaint to Plaintiff.

17 DATED: August 20, 2012

18 

19 Hon. Michael M. Anello
20 United States District Judge
21
22
23
24
25
26
27
28